

1 place today for unbundled loops. If it's a double  
2 step, we ask that the interval be extended. It  
3 depends on what type of service is being asked for,  
4 what type of unbundled network element is being  
5 asked for.

6 In the case of line sharing, because that  
7 is down to a three-business-day interval already  
8 today, we might need longer to perform a  
9 multiple-step LST. So that could add two to three  
10 days onto the order, potentially.

11 In a lot of cases, we are able to  
12 provision even a double step within the standard  
13 three-business-day line sharing interval.

14 If it requires a build-out of copper or  
15 UDLC facilities, I know Mr. Albert will speak up  
16 here, but we could be talking 30, 60 days. Again,  
17 that would be included in the estimate back to the  
18 CLEC.

19 MR. ALBERT: That would be like the worst  
20 case max. You could have some that are a couple  
21 weeks, you could have some on the extremely long  
22 end, where we've got to put completely new equipment

1 in the central office that ran to the extreme.

2 MS. NATOLI: Are those intervals somehow  
3 excluded from -- is this recognized, then, as an  
4 exception to your performance plan measurement  
5 intervals that you're held to for provisioning loops  
6 somehow?

7 MS. CLAYTON: Yes.

8 MS. NATOLI: Why, because you're claiming  
9 that that's a new construction?

10 MS. CLAYTON: It is new construction.

11 MS. NATOLI: I know it is new  
12 construction, but that's the reasoning why it  
13 wouldn't have to be?

14 MS. CLAYTON: Yes. And I think it's new  
15 as well. I mean, the triennial order came out, had  
16 an effective date of October 2. This is new  
17 activity that we're performing for CLECs. We're  
18 going to have to start interfacing with them now, as  
19 far as sending a query back to them saying there are  
20 work activities involved, there are charges  
21 involved, do you want us to proceed with the order  
22 or not.

1           So there's a delay in time right there  
2   that needs to be accommodated for us that we never  
3   had to consider. So we are asking that it be  
4   excluded at this time from metrics.

5           MR. LERNER: All these witnesses have  
6   testified already, so there's no testimony to be  
7   submitted into evidence for them additionally;  
8   right?

9           MR. LERNER: We'll go ahead with issue  
10   C25, then. Parties have both waived  
11   cross-examination.

12           MR. LERNER: Well, some of the faces are  
13   new. Do we have a name card for --

14           MR. PERKINS: We seem to have misplaced  
15   it.

16           MR. LERNER: Witnesses will introduce  
17   themselves, and the court reporter will then swear  
18   them in.

19           MR. AGRO: Louis Agro, Verizon.

20           MR. ROMANO: Gregory Romano, Verizon.

21           MR. WHITT: David Whitt, Cavalier  
22   Telephone.

1 MR. GRANT: Lee Grant, Cavalier Telephone.

2 Whereupon,

3 LOUIS AGRO,

4 GREGORY ROMANO,

5 DAVID WHITT, and

6 LEE GRANT

7 were called as witnesses and, having first been duly  
8 sworn, were examined and testified as follows:

9 MR. ADAMS: I guess we can begin with  
10 Cavalier. Are you aware of any other  
11 interconnection agreements which include a similar  
12 provision similar to what you're proposing here, in  
13 terms of limitation on the -- well, the exemption on  
14 the limitation on liability?

15 MR. GRANT: I personally am not aware of  
16 any other interconnection agreements that have.

17 MR. ADAMS: Mr. Whitt?

18 MR. WHITT: I'm not, other than I know in  
19 terms of some of the stuff we've done in the past  
20 with antitrust proceedings that are in the current  
21 agreement, we've been able to proceed in that  
22 direction but not specifically with this language.

1 MR. ADAMS: Okay. And are you familiar  
2 with the language that was proposed in the  
3 WorldCom/AT&T/Verizon -- the previous Virginia  
4 arbitration?

5 MR. WHITT: I am not specifically.

6 MR. ADAMS: Mr. Grant?

7 MR. GRANT: I am not.

8 MR. ADAMS: Verizon states, I think, in  
9 the rebuttal testimony that -- states that it is  
10 willing to exclude defamation, misleading or  
11 inaccurate advertising and violation of the  
12 antitrust laws from this exception to the  
13 limitation, so I guess it's an exemption to the  
14 exception on the limitation.

15 What other sorts of liability would you  
16 ask to be excluded from the limitations on  
17 liability?

18 MR. GRANT: I will speak to that. I think  
19 it's pretty clear that we are asking for a general  
20 limit as to state and federal laws, and in addition  
21 to state and federal regulations -- the limitation  
22 of liability exclusion that we have proposed is

1 specifically related to state and federal laws that  
2 would be in regards to telecommunications law, and  
3 also state and federal regulations that would be  
4 interpreting those laws.

5 Specifically, if you look at the rebuttal  
6 that was provided, and also the proposed language I  
7 think is pretty clear that it relates to those type  
8 of circumstances.

9 MR. ADAMS: Okay. Could you give me a --  
10 well, I asked that.

11 We'll move on to Verizon. This may have  
12 been answered by Cavalier, but I'll ask it anyhow.

13 Given that Verizon has indicated its  
14 willingness to exclude defamation, misleading or  
15 inaccurate advertising or violation of the antitrust  
16 laws from the limitations on liability, from what  
17 other forms of liability are you seeking protection  
18 by opposing this language?

19 MR. ROMANO: Well, the open-ended nature  
20 of the language, I think, could be interpreted to  
21 render the limitation of liability clause  
22 meaningless, because the proposal by Cavalier speaks

1 to any damages arising from a violation of federal  
2 or state law or regulation. So arguably, any  
3 violation of the interconnection agreement could be  
4 construed to be a violation of federal or state law  
5 or regulation, and therefore, creating an exception  
6 like this would basically render the whole  
7 limitation of liability provision meaningless.

8 MR. GRANT: I would like to add something  
9 to that. I think, again, if you just look at the  
10 language, it's not as broad, it doesn't say state or  
11 federal law. It says state or federal law governing  
12 the provision of telecommunications services. I  
13 think that should be somewhat of a distinction.

14 MR. ROMANO: It goes on to say "or  
15 commerce more generally." So it's not just limited  
16 to telecommunications services.

17 MR. ADAMS: Mr. Grant, you look like  
18 you're ready to respond.

19 MR. GRANT: Well, "or commerce," I'm not  
20 sure -- I didn't draft this specific provision, so  
21 I'm not sure if commerce relates back to  
22 telecommunications services or if commerce is meant

1 to be left out and a general term.

2 MR. ROMANO: May I respond to that?

3 MR. ADAMS: Please.

4 MR. ROMANO: The way I read it, it speaks  
5 to state or federal law governing the provision of  
6 telecommunications services, then goes on to say "or  
7 commerce more generally." That phrase "commerce  
8 more generally" to me is not impacted by the phrase  
9 "telecommunications."

10 MR. ADAMS: If you were to strike the term  
11 "and commerce more generally," would that be more  
12 satisfactory?

13 I see counsel shaking her head.

14 MR. ROMANO: No, it would not,  
15 particularly because it goes on to speak to not only  
16 the law governing telecommunications services or  
17 commerce more generally, but also speaks to state or  
18 federal regulations governing telecommunications,  
19 which as I indicated earlier, I think an argument  
20 could be made that any violation of the  
21 interconnection agreement could arguably be a  
22 violation of a regulation implementing federal law



1 in communications.

2 MR. GRANT: I think a key point to  
3 understand here is, this isn't a one-sided  
4 situation. It's going to apply to both parties  
5 equally. So we're not talking about slant as far as  
6 liability, it's going to be equally imposed on both  
7 parties, to both Verizon and Cavalier.

8 MR. ADAMS: I don't have any further  
9 questions.

10 MS. NATOLI: I do. Verizon, do you  
11 understand the limitation of liability -- I've seen  
12 the additional things that you're willing to add to  
13 your exclusion list. Does your language, even with  
14 those things added, what would happen in the case of  
15 gross or intentional misconduct that would occur,  
16 for example, in a scenario where, you know, a  
17 Verizon technician on behalf of Cavalier servicing  
18 some facility did something intentional or something  
19 like that? Does your limitation of liability cover  
20 that or exclude that?

21 MR. ROMANO: Well, one of the exceptions  
22 to the limitation of liability provisions is for

1 indemnification, the indemnification provisions in  
2 section 24. Now, those -- that provision speaks to  
3 negligence leading to personal injury or death or  
4 property damage or personal property damage. So in  
5 that case, that is excepted from the limitation of  
6 liability provision.

7 But in terms of intentional or willful  
8 misconduct with regard to the provision of  
9 telecommunications services, is that what you're --

10 MS. NATOLI: Well, both actually, because  
11 I think they're both relevant questions.

12 MR. ROMANO: Well, in that case, the  
13 limitation of liability provision would apply in the  
14 sense that you have the service failure provision,  
15 which limits a recovery for a particular service  
16 failure to the amount that the customer is paying  
17 for a particular service in a particular month, and  
18 then the second piece of the limitation of liability  
19 provision goes on to say that no consequential,  
20 incidental damages --

21 MS. NATOLI: Okay, and this is to Verizon  
22 generally, not just to the two witnesses, and I'm

1    sorry I have to ask it this way, but it relates to  
2    an issue we discussed yesterday, and I think I  
3    mentioned that to me it was tied to the limitation  
4    of liability issue, and it had to do with -- I can't  
5    remember what --

6                   MS. NEWMAN:   The defamation or  
7    disparagement?

8                   MS. NATOLI:   It was in the disparagement  
9    issue, and it was when the witness from Verizon said  
10   we have ways of dealing with that, and then he also  
11   said there are other remedies available to Cavalier  
12   to -- against Verizon to cover that situation if  
13   they have suffered true monetary damage by losing a  
14   substantial customer.

15                   And this qualification that Mr. Romano has  
16   mentioned is exactly what I thought the limitation  
17   of liability would prevent Cavalier from bringing  
18   any cause of action in any way to recover from that  
19   loss that they suffered as a result of an  
20   intentional act on the part of a Verizon employee,  
21   whether or not Verizon condoned that action.   Okay?  
22   Do you see what my issue is?

1 MS. NEWMAN: Keep me honest, Greg, but  
2 isn't the exception that we just proposed in your  
3 rebuttal testimony embracing defamation as well?

4 MR. ROMANO: It is. There is a specific  
5 exclusion for defamation, so if disparagement rose  
6 to the level of defamation, that would be  
7 excluded --

8 MS. NATOLI: But defamation is a really  
9 tough thing to prove. Defamation, the standard for  
10 defamation per se. Intentional action on the part  
11 of Verizon employees that don't amount to defamation  
12 but are intentional misconduct.

13 I guess to me, that's the one that's  
14 actually more relevant here than defamation, is  
15 intentional misconduct and the conduct of a  
16 service-affecting activity.

17 MR. ROMANO: Okay. But to me, there are  
18 other remedies that are involved. You have the  
19 performance assurance plan that's excluded from the  
20 limitation of liability provision, and the  
21 limitation of liability provision doesn't prevent  
22 recovery of damages, it just limits recovery in

1 terms of consequential --

2 MS. NATOLI: Right. But these aren't --  
3 the issues that I'm -- we were talking about  
4 yesterday, and I recognized you weren't here, I  
5 apologize to have to make you think of what we were  
6 talking about, but they're not performance assurance  
7 events.

8 It dealt with particular provisions that  
9 Cavalier was asking for relating to customer --  
10 their customer contacts in -- that occur through  
11 some Verizon employee contact with their customer,  
12 relating to the provision of Cavalier's service.

13 And Cavalier was asking for specific  
14 monetary -- in another provision of the agreement,  
15 specific monetary liquidated damages as a result of  
16 those types of egregious employee-related  
17 misconduct, so to speak.

18 And Verizon wasn't disputing the fact that  
19 this kind of employee misconduct occasionally could  
20 occur, because you obviously can't control all the  
21 actions of all of your employees every day, every  
22 second. And I had asked the question, you know,

1 isn't in that scenario some kind of compensation or  
2 some kind of redress appropriate for Cavalier, in  
3 which case then the witness said then they have  
4 other recourse, other courses of action they could  
5 bring along to get that.

6 I understood your limitation of liability  
7 clause to prevent that from happening, and I think  
8 we've -- it seems like we're confirming that it  
9 would, as currently written, prevent that.

10 MR. ROMANO: Well, it wouldn't prevent it  
11 necessarily. It would impose a limitation on the  
12 amount of --

13 MS. NATOLI: Yeah, but just to the --  
14 explain to me what the amount that you understand  
15 would be -- it would limit it to the cost of the  
16 service. So if he's buying the UNE at 30 -- I don't  
17 know, whatever, \$30 a month, then they're absolved  
18 of \$30 a month.

19 MR. ROMANO: If the thing at issue was a  
20 service failure. If it was not a service failure,  
21 and it was something in connection with the  
22 agreement, the only limitation would be it couldn't

1 include consequential, indirect, special type  
2 damages.

3 MS. NEWMAN: We can address this also more  
4 clearly, of course, in our post hearing briefs, but  
5 I will leave you with this thought. The kinds of  
6 conduct that Cavalier complained of yesterday in  
7 terms of -- or the provision of the  
8 telecommunication service, that conduct goes on all  
9 the time in other industries, and you have --

10 MS. NATOLI: Right.

11 MS. NEWMAN: You have rights under the law  
12 and 500 years of -- proves you have rights such as  
13 defamation is one, and I'm sure there are other  
14 remedies one can pursue. And what specifically  
15 Cavalier identified for us was defamation, in  
16 particular. That is why we came back and came up  
17 with this exception.

18 So the only other things limited --  
19 whatever other rights they would have would fall  
20 into the limitation of liability.

21 MS. NATOLI: You're saying, then, they're  
22 not entitled to any kind of recovery for any other

1 kind of intentional interference -- that's an easier  
2 one to do.

3 MS. NEWMAN: Is that the claim they are  
4 now asserting they want to pursue?

5 MS. NATOLI: No, no, I'm asking this from  
6 our -- the FCC's understanding of this. It's  
7 actually more -- it's information that is helpful in  
8 understanding or addressing the issue from yesterday  
9 more so than this particular limitation of liability  
10 issue.

11 But I didn't want to go into all of this  
12 yesterday in relation to that issue, because we  
13 hadn't gotten to this yet, to understand it. And if  
14 intentional misconduct was somehow not included in  
15 this limitation of liability provision, it would  
16 have -- I wouldn't even have the question.

17 MR. ROMANO: May I add one thing?

18 MS. NATOLI: Sure.

19 MR. PERKINS: If I could maybe respond  
20 very briefly to what Ms. Newman said.

21 MS. NATOLI: Sure. Is it appropriate to  
22 do that before we hear from Mr. Romano?



1 MR. PERKINS: Well, I think they added --  
2 yes, I think so. They added those other three  
3 points in response to some discovery questions, I  
4 believe, that we posed. The remaining point to  
5 Cavalier is -- the remaining issue for Cavalier, I  
6 think, could probably be narrowed to liability for  
7 violations of the Communications Act and the  
8 regulations under that act and similar state laws  
9 and regulations.

10 I don't know if that would help focus  
11 things a little bit.

12 MS. NATOLI: It does, with respect to what  
13 you meant by "under state telecommunications laws."  
14 Did you mean the provision for that particular  
15 issue; did you mean other than what is specifically  
16 governed by this agreement? Did you mean -- or did  
17 you mean including things that are covered by this  
18 agreement?

19 MR. PERKINS: Including. I think title 56  
20 of the Virginia code is the appropriate reference,  
21 and 47 USC sections 151 and following for the  
22 federal law.

1 MS. NATOLI: So you really do mean  
2 everything governed by this agreement, as well,  
3 okay.

4 MS. NEWMAN: So we're not talking about  
5 remedies of common law.

6 MR. PERKINS: No, I think we've pretty  
7 much agreed to limit the breach of contract and  
8 common law causes.

9 MS. NATOLI: Right. With respect to this  
10 provision.

11 MR. PERKINS: Yes, with respect to --

12 MS. NATOLI: My issue relates to the issue  
13 from yesterday and the effect of this provision in a  
14 more general sense to that issue.

15 MR. PERKINS: Briefing was -- I thought it  
16 would help focus this issue.

17 MS. NATOLI: That is good, because I think  
18 we did want to know about the telecom exception as  
19 well.

20 MR. ROMANO: Just one thing. In  
21 Cavalier's proposal about the telecommunications law  
22 and regulation doesn't speak to a willful misconduct

1 or intentional acts at all. It just is a blanket  
2 statement.

3 MS. NATOLI: Right, okay. That's it.

4 MR. LERNER: We have testimony that needs  
5 to be offered into evidence?

6 MR. PERKINS: Yes, Cavalier would move the  
7 admission of Mr. Grant's rebuttal testimony as  
8 Exhibit C-20.

9 MS. NEWMAN: Verizon would also move into  
10 evidence the testimony of Gregory Romano dated  
11 September 23, 2003 as Verizon Exhibit 13.

12 The rebuttal testimony of Gregory Romano  
13 dated October 9, 2003 and marked as Verizon Exhibit  
14 14, as well as the rebuttal testimony of Louie Agro  
15 dated October 9, 2003, now marked as Verizon Exhibit  
16 15.

17 MR. LERNER: They are admitted.

18 (Verizon Exhibits 13, 14 and 15, and  
19 C-20 received.)

20 MR. LERNER: We will now take a break for  
21 lunch and resume with issue C27 and then any other  
22 issues that we need to discuss at 2:00.

1                   (Whereupon, at 12:30 p.m., the hearing was  
2 recessed, to be reconvened at 2:00 p.m. this same  
3 day.)  
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